

Fighting Fire with Fire

Daniel Hegedüs

2019-09-06T18:40:42

At the first sight, the likely nomination of V#ra Jourova as Commissioner for rule of law and dropping Frans Timmermans out of the portfolio appears to be a significant victory for the Visegrad Group. However, considering Jourova's track record, her nomination might be a clever, but hazardous move by Ursula von der Leyen that may deepen the cleavage among the Visegrad countries, put an end to their coordinated acting in sovereignty related issues, and cause more headache in Budapest and Warsaw than expected.

Depriving Timmermans of the rule of law portfolio was a key goal of Poland, Hungary and the Czech Republic (three of the four Visegrad states) after they successfully blocked his election as President of the next European Commission in June 2019. The animosities between Timmermans and the autocratizing governments in Warsaw and Budapest have deep roots, and were publicly expressed by Polish Prime Minister Morawiecki when he claimed that the outgoing first vice-president of the European Commission has followed a [hostile and disrespectful approach](#) towards the governments from the region.

However, the real reason of the conflict can be certainly traced back to Timmermans engagement in defense of rule of law and other Article 2 values, even if the balance of his track record is rather mixed to say the least. Although he pursued a rather principled and determined strategy against the wrecking of judicial independence in Poland that ultimately culminated in a Commission-triggered Article 7 procedure and court referrals leading to the ground breaking CJEU ruling in the Polish judges case, his approach toward Hungary has been rather biased for various, intensively disputed reasons (see details [here](#), [here](#), [here](#) and [here](#)).

Nevertheless, with its [new Rule of Law Communication in 2019](#) and the prospect of an intensive interplay between the Commission and the CJEU the European Commission demonstrated its readiness to challenge the rule of law and democratic backsliding in EU Member States in a more determined and systemic manner. Therefore President-Elect Ursula von der Leyen's outreach toward the Visegrad Countries, her promise of a new relationship based on mutual respect and intense dialogue, and Timmerman's widely discussed removal from the rule of law field might have left the impression behind that the Visegrad Group was successful in blocking recent positive developments at the rule of law field and the next Commission of von der Leyen might be more open for sovereigntist arguments when it comes to the rule of law oversight of Poland or Hungary.

However, the potential nomination of V#ra Jourova as Commissioner responsible for the portfolio rule of law, disinformation and external electoral meddling foreshadows that von der Leyen might have been serious about her strong commitment to the compliance with European values. Although the position is still contested, among others by the Belgian commissioner-candidate Didier Reynders, and as it is usual

by the distribution of the Commission posts “nothing is settled until everything is settled”, Jourova has a fair chance to be elected as Timmermans’ successor. The nomination of Jourova, the recent Czech Commissioner in charge of justice, consumer rights and gender equality, might be a clever and promising decision of von der Leyen that ultimately does not extend, but undermines the much feared paralyzing influence of the Visegrad Countries, first and foremost of Poland and Hungary, at the rule of law field.

Several arguments speak in favor of this portfolio allocation. First, Jourova demonstrated considerable commitment and political skills as she advanced her flagship project as justice Commissioner, the European Public Prosecutors Office (EPPO), to success. The EPPO, planned to launch its operations at the end of 2020, was one of the EU’s most remarkable institutional developments in the period 2014-2019. Its mission is to protect the EU’s financial interest, investigate and prosecute crimes related to EU funds; a very serious issue particularly in Central and Eastern Europe. As Andrej Babiš, Czech Prime Minister and chairman of Jourova’s ANO party, also faces serious allegations regarding the misuse of EU funds, hence it is rather hard to argue against Jourova’s political and ethical independence. If her performance as justice Commissioner may be indicative, she can be considered a committed and knowledgeable candidate for the rule of law portfolio.

Second, her nomination may have a constraining effect on illiberal populist tendencies both within the Czech governing party ANO and the Czech Republic as a whole. Hardly any government would seek a confrontation with its own European Commissioner or make steps that might undermine the Commissioner’s credibility and standing within the College.

Third, Jourova’s reappearance in the new position might render the forging of potential sovereignist issue coalitions much more difficult among the Visegrad Countries; for example in opposition to the enhanced rule of law scrutiny of Member States or against the introduction of an effective rule of law conditionality regarding the EU funds. In case of Jourova’s nomination and election, the Czech government might be increasingly motivated to keep distance from the Polish and Hungarian positions, and stay away from such coalitions. Moreover, Hungarian, but especially the Polish diplomacy would definitely think twice to provoke or deepen conflicts with the European Commission through personal attacks against the Commissioner in charge of the rule of law portfolio, if it may have a negative impact on the Czech-Polish or Czech-Hungarian bilateral relations as well. Last but not least, it would be much more difficult to frame her as the evil face of an interventionist EU that disrespects national sovereignty and the popular mandate of national governments in Central and Eastern Europe, a political communication exercise that was repeatedly succeeded in the past by Warsaw and Budapest with regard to Timmermans.

Obviously, there are some counter-arguments that might be brought into play against her person, or against the composition of her portfolio as well. On the one hand, as it is often mentioned in the media pieces covering her potential nomination, Jourova faced criminal prosecution due to alleged bribery and misuse of EU funds, but ultimately she was exonerated. What the articles often forget to mention is the fact

that the prosecution lasted from 2006 to 2008, and Jourova was already elected with this background to the post of the EU's justice Commissioner in 2014. So the issue is not only legally, but also politically a *res judicata*. She also might face criticism due to her affiliation with ANO, and due to the Czech governing party's worsening track record at the democracy and rule of law field. However, as I argued above, her political background is rather an opportunity that should be exploited to constrain ANO's and the Czech Republic's further democratic backsliding, instead of using the argument against her.

On the other hand, real criticism should be exerted toward the composition of the portfolio, and the merger of rule of law, disinformation and external electoral meddling under the sphere of responsibility of a single Commissioner from the Visegrad Group. Although the substance of the three topics might be similar, but the inherent logics how these challenges should be addressed are fundamentally different. Under the given circumstances any Commissioner responsible for the portfolio might face significant pressure by Member States under rule of law scrutiny in order to focus on the external dimension of democratic backsliding, establish his or her pet projects and pursue political success in the external, and not in the internal rule of law domain.

Such an approach is to be expected especially from Poland, as Warsaw might be eager to support the Commission's attempts to counter Russian interference in European politics. If in the same time valuable political resources can be diverted from the rule of law field as well, it is double win for the PiS government at the Vistula. Therefore disinformation and external electoral meddling should be rather attached to the digital portfolio in order to avoid negative repercussions to the rule of law field.

Ursula von der Leyen's decision to offer the rule of law portfolio for a candidate from the Visegrad Countries might be rather a curse and not a blessing for the EU's sovereignist and increasingly illiberal Eastern bloc, at least as long as the candidate is V#ra Jourova. Whether the President Elect's fighting fire with fire strategy might succeed is the key question for the future. Nevertheless, being part of her outreach strategy to the Visegrad Countries, Jourova's nomination is a political gift from von der Leyen that is impossible to refuse, but even harder to celebrate in Prag, Warsaw or Budapest.

